

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

KARL SHACKELFORD #1368700 §
v. § CIVIL ACTION NO. 6:07cv442
SHERIFF J.B. SMITH, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Karl Shackelford, proceeding *pro se*, filed this lawsuit complaining of alleged violations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Shackelford complained of an incident which occurred at some point in the year 2000, involving an arrest for family violence. He complained of threats which he received while he was in the Smith County Jail, including threats to harm him and a threat to charge him with escape, and appears to complain that the evidence to support the family violence charge against him was insufficient.

On March 17, 2008, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed. The Magistrate Judge observed that the on-line records of Smith County did not show that Shackelford had ever been convicted of family violence or escape, in 2000 or any other year. The Magistrate Judge also stated that Shackelford signed his lawsuit in 2007, well over two years after any point in 2000 when the incidents complained of could have occurred, and so concluded that Shackelford's lawsuit was barred by the statute of limitations.

Shackelford filed objections to the Magistrate Judge's Report on April 2, 2008. These objections ask that the Court waive the \$5.00 habeas corpus filing fee and again say that he served

90 days in jail on the charges. He attaches court documents referring to an assault charge in 1999 (not 2000), to which the Smith County records show he pleaded guilty and received a sentence of 80 days in jail. See http://judicial.smith-county.com/Scripts/UVlink.isa/smith_2/WEBSERV/CriminalSearch?action%253Dview%26track%253D311.

To the extent that Shackelford wishes to complain of the threats which he received and his treatment in the jail, the Magistrate Judge correctly said that the claims are barred by the statute of limitations. Shackelford cannot challenge the validity of his conviction in a civil rights proceeding for damages pursuant to Heck v. Humphrey, 114 S.Ct. 2364, 2372 (1994). Nor can his lawsuit be construed as a habeas corpus action, as Shackelford appears to request in his objections, because the statute of limitations has long since expired on the 1999 assault conviction reflected in the documents which Shackelford attaches to his objections, and he has shown no valid basis for the tolling of this statute. 28 U.S.C. §2244(d). Shackelford has not shown any reason why his lawsuit should not be dismissed, and his objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings and records in this cause, as well as the Report of the Magistrate Judge and the Plaintiff's objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as frivolous. 28 U.S.C. §1915A. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 9th day of April, 2008.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**